IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
SCOTT RUSSELL DAVIDSON	§	
d/b/a SCOTT DAVIDSON INTEREST	§	**Jointly Administered Under**
d/b/a ANTIQUE EXCHANGE and	§	**CASE NO. 98-42080-BJH-11**
MARTHA ANN DAVIDSON,	§	
	§	
Debtors.	§	

MEMORANDUM OPINION

Before the Court is the Motion to Determine Value of Properties for Ad Valorem Tax Purpose (the "Valuation Motion")[1] filed by Scott Russell Davidson and Martha Ann Davidson (collectively, the "Debtors"). The Debtors own hundreds of pieces of real property in Tarrant County, Texas that are the subject of the Valuation Motion. After a status conference with the parties, the Court concluded that the Valuation Motion would be decided in ten (10) property increments. The Court heard the evidence with respect to the first ten properties (the "Properties") on May 15, 2001, at which time the Court took the Valuation Motion under advisement. The parties submitted post-hearing summaries of the evidence and issues involving each of the Properties on June 1 and 7, 2001.[2]

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[1] The Debtors filed an Amended Motion on June 27, 2002. Both the original motion and the amended motion are referred to herein collectively as the "Valuation Motion."

[2] At the request of the parties, the Court abated further consideration of the Valuation Motion because the parties thought it possible that the issues raised by the Valuation Motion could be resolved through the plan confirmation process, rendering the Valuation Motion moot. Unfortunately, the Debtors ultimately proposed, and the Court confirmed on May 31, 2002, a consolidated plan which merely provided for payment of the ad valorem taxes "to the extent that same are finally allowed and approved by the Bankruptcy Court." The plan also provides for the retention of jurisdiction by this Court for the purpose of "classification and allowance of the claim of any creditor." The confirmation process did not, therefore, resolve any of the issues raised by the Valuation Motion, and on June 27, 2002, the Debtors filed an "Amended Motion for Valuation of Properties for Ad Valorem Tax Purposes." Thereafter, the Debtors moved to submit additional evidence on the issue of "the reasons the Debtors or other parties, who were at least ostensibly in control of many of the properties, had not acted to protect their rights by objecting to the assessments of value of certain of the properties that were involved in the first Chapter 11 proceeding . . . .". *See* Motion to Reopen for Court to Take Additional Evidence, p. 3, ¶ 8. By Order entered on

After considering the record and the parties' briefs and post-hearing summaries of the evidence, the Court issues this Memorandum Opinion which shall constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, made applicable here by Fed. R. Bankr. P. 7052. The Court has core jurisdiction over the Valuation Motion under 28 U.S.C. §§ 1334 and 157(b).

I. Contentions of the Parties

The Debtors contend that this Court can determine the value of each of the Properties for ad valorem tax purposes for a number of years (generally ranging from the early 1990s to 1998)[3] pursuant to 11 U.S.C. § 505(a)(1) and, to the extent the Debtors have overpaid their taxes in light of the Court's valuation of the Properties, grant the Debtors the right to credit that overpayment against their remaining ad valorem tax obligations.

Tarrant County, the City of Arlington, the City of Fort Worth and Fort Worth ISD (collectively, the "Taxing Authorities") contend that (i) the Court should abstain from valuing the

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September 26, 2002, the Court denied the motion to submit additional evidence on the ground that the issue on which additional evidence was sought to be introduced was not a new issue and, if relevant at all, such issue could have been addressed in connection with the hearing on the original Valuation Motion, at which time the parties had been permitted to present a full evidentiary record.

[3]At trial, the Debtors sought value determinations for the Properties through 2001. That relief was not requested in the original Valuation Motion and the Taxing Authorities opposed the Court's consideration of any years after 1998. Although the appraisals admitted into evidence valued the properties through 2001, in light of the Taxing Authorities' objection, the Court ruled that it would not consider any relief beyond that sought in the Valuation Motion, and that if Debtors sought further relief, they would be required to file supplemental pleadings. On June 27, 2002, the Debtors filed an amended motion which, *inter alia*, asked for a determination of values for the tax years 1985 through 2001. That motion was set for a status conference on July 31, 2002. On that date, the taxing authorities argued that the Court was precluded from determining those post-petition taxes and the Debtors argued otherwise. There was no ruling from the Court as to whether it would consider those issues. Other arguments were made and ultimately, the Court directed that if Debtors wanted to reopen the record with respect to the Properties, Debtors would need to file such a motion. While a motion to reopen the evidence was filed on August 23, 2002, it did not seek to reopen the evidence or provide additional authority with respect to their request for valuations through 2001. As noted previously, the motion to reopen the evidence was denied. *See* footnote 2, *supra.* As the Debtors have failed to properly raise and preserve the issue, the Court will not consider valuations for the Properties for the years 1999 through 2001.

Properties because such a valuation will not inure to the benefit of the bankruptcy estate or the unsecured creditors of the estate; (ii) the Court is precluded from valuing certain of the Properties for certain of the years in dispute pursuant to 11 U.S.C. § 505(a)(2) because the amount of the tax was "contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction;" (iii) the Debtors should be bound by their admissions of value contained in various earlier pleadings filed in these jointly administered cases;[4] (iv) with respect to the taxes owed on properties owned by Mr. Davidson when his prior Chapter 11 case was filed (the "Prior Case"), the allowance of the tax claims in the Prior Case bars any objection or redetermination of the amount owed for those years; (v) with respect to any taxes that arose during the administration of the Prior Case, Mr. Davidson was bound to protest and pay those taxes in accordance with state law pursuant to 28 U.S.C. §§ 959 and 960; and (vi) with respect to any properties for which the Debtors have paid the taxes, the Court is precluded pursuant to 11 U.S.C. § 505(a)(2) from redetermining the value of the property and the amount of taxes owed because it cannot grant the Debtors a refund (or credit) due to the Debtors' failure to timely request a refund from the governmental unit from which such refund is claimed.

In response, the Debtors contend that (i) abstention is not appropriate because the Debtors and unsecured creditors would be benefitted by a lower value determination;[5] (ii) the prior judicial or administrative determinations of value do not preclude a redetermination because those

[4]The Debtors filed amended schedules shortly before trial, conforming their scheduled value for the Properties to their expert's opinion of the value of the Properties.

[5] As noted previously, when the original Valuation Motion was heard, no plan of reorganization had been confirmed. However, a proposed plan was on file and the Debtors argued that their proposed 100% plan payment to unsecured creditors could be accelerated if the claims of the Taxing Authorities were reduced. However, as noted earlier, a plan of reorganization for the Debtors has now been confirmed. That plan provides that unsecured creditors holding claims of $1,000.00 or less will be paid in cash within sixty days of the effective date of the plan. Unsecured creditors holding claims in excess of $1,000.00 will be paid in full with six percent interest over sixty months in equal monthly payments commencing thirty days after the effective date. There is no provision for acceleration of this payment schedule should the claims of the Taxing Authorities be reduced.

determinations were largely taken "by default"– the Debtors did not appear and contest the value determinations; (iii) the Debtors have the right to amend their schedules to conform to the value information that was received from their expert appraiser; and (iv) the Prior Case does not preclude relief being granted in these cases.

II. Factual Background

The Prior Case was filed by Mr. Davidson on March 7, 1989. Mr. Davidson owned four (4) of the Properties at issue here at the time of the Prior Case – the Properties located at 3418 Ada, 4608 Ave. I, 3319 Ave. L, and 3009 Ave. H (the "Prior Case Properties"). The Taxing Authorities filed a proof of claim, Claim No. 88, with respect to three of the Prior Case Properties in the Prior Case (the "Prior Case Claims"). The Prior Case Claims are summarized by property below:

Property:	Year:	Value of Property:	Amount of Claim:
3418 Ada	1987	$27,253	$611.42
	1988	$21,997	$413.71
	1989	$21,997	$407.29
3009 Ave. H	1987	$21,130	$474.04
	1988	$21,015	$395.26
	1989	$21,015	$389.12
4608 Ave. I	1987	$16,752	$375.83
	1988	$13,256	$249.32
	1989	$13,256	$0[6]

No claim was filed by the Taxing Authorities for the property located at 3319 Ave. L. However, that property was sold and the claims of the Taxing Authorities were paid in full. The Taxing Authorities contend that this sale and payment moots the Valuation Motion with respect to this property. The Debtor contends that the property should nevertheless be valued for purposes of

[6]At some point, Mr. Davidson paid the 1989 taxes on 4608 Ave. I, and thus the Taxing Authorities' proof of claim shows an amount of $0.00 due for 1989.

determining the amount of taxes overpaid and hence the credit to which the Debtor is entitled.

Mr. Davidson did not object to the Prior Case Claims or seek a determination of the value of the Prior Case Properties pursuant to 11 U.S.C. § 505(a)(1). A plan of reorganization was confirmed in the Prior Case on August 13, 1991 (the "Prior Plan"). Pursuant to the Prior Plan, the Prior Case Claims were to be paid in full over seventy-two (72) months with 11% interest.

These jointly administered cases were filed on April 6, 1998. Mr. Davidson is the son of Mrs. Davidson. One of the Debtors owns each of the Properties at issue here. Mr. Davidson has assisted his mother in the management of her properties and is familiar with those properties. The Debtors buy and resell real property. This real property generally consists of single-family homes or duplexes located in older and lower socioeconomic neighborhoods. Many of the properties are in need of repair, varying from minor repairs to extensive reconstruction. Once repaired, the Debtors sell or lease the property.

III. The Valuation Motion

The Court will address each of the legal issues raised by the Taxing Authorities separately and then apply the outcome of that analysis to the Properties.

A. The Legal Issues

1. Should the Court Abstain?

Section 505(a) provides bankruptcy courts with discretionary authority to determine a debtor's tax liability. *See In re Onondaga Plaza Maint. Co.*, 206 B.R. 653, 656 (Bankr. N.D.N.Y. 1997); *Marcellus Wood & Trucking, Inc. v. Michigan Employment Sec. Comm'n (In re Marcellus Wood & Trucking, Inc.)*, 158 B.R. 650, 654 (Bankr. W.D. Mich.1993); *In re Swan*, 152 B.R. 28, 30 (Bankr. W.D.N.Y. 1992); *Queen v. United States (In re Queen)*, 148 B.R. 256, 259 (S.D. W.Va.1992), *aff'd* 16 F.3d 411 (4th Cir. 1994); *El Tropicano, Inc. v. Garza (In re El Tropicano, Inc.)*,

128 B.R. 153, 161 (Bankr. W.D. Tex.1991). As noted by the *Marcellus Wood & Trucking* court, "[c]ourts agree that the policy underlying § 505 is the protection of the estate from a tax liability that a negligent or indifferent debtor failed to challenge." 158 B.R. at 654 (citations omitted). In deciding whether to abstain from making § 505 determinations, courts generally consider the following factors: (i) the complexity of the issue under tax law, (ii) the exigency of the matter, (iii) the burden on the bankruptcy court's docket, (iv) the length of time required to hold a trial and to render a decision, (v) the debtor's asset and debt structure, and (vi) the actual or potential prejudice to either party. *See In re Galvano,* 116 B.R. 367, 372 (Bankr. E.D.N.Y. 1990); *see also In re Northbrook Partners LLP,* 245 B.R. 104, 118 (Bankr. D. Minn. 2000).

The issues presented by the Valuation Motion are not particularly complex. The Debtors seek a determination of the value of real property they own in Tarrant County, Texas. This Court values real property regularly. Moreover, now that the parties are focused on it, the Valuation Motion can be decided relatively promptly. While there are a large number of properties involved, once the disputed legal issues are decided with respect to a few of the properties, the parties and the Court should be able to apply these legal conclusions to the balance of the properties without an undue burden.[7] Because the Debtors do not contest the tax rate (the Debtors only contest the value to which that rate applies), the Taxing Authorities are not prejudiced by the Valuation Motion. *In re AWB Associates,* 144 B.R. 270, 276 (Bankr. E.D. Pa. 1992)(citing *In re Fairchild Aircraft Corp.,* 124 B.R. 488, 491 (Bankr. W.D. Tex. 1991) (where overall methodology used by appraisal district is not being challenged and policy of uniformity of assessments is not implicated, taxing authorities are not

[7] Perhaps naively, the Court believes that this decision will assist the parties in resolving their disputes as to the remaining properties. If the parties do not work in good faith towards resolution of remaining disputes, then judicial determination of the Valuation Motion (as it relates to the remaining properties) will be extremely burdensome on this Court's docket. Debtors' counsel has indicated that there are approximately 200 properties at issue, each with disputes regarding the ad valorem taxes for five to ten tax years.

prejudiced).

Many courts have held that abstention is appropriate where only the debtor will benefit from a § 505 determination. *See e.g.,Gossman v. United States (In re Gossman),* 206 B.R. 264 (Bankr. N.D. Ga. 1997) (abstention appropriate in no asset Chapter 7 case)*; Starnes v. United States (In re Starnes),* 159 B.R. 748, 751 (Bankr. W.D.N.C. 1993)(abstention from tax liability determination appropriate when creditors could not be affected because there would be no distribution from the estate to any creditor); *In re St. John's Nursing Home, Inc.,* 154 B.R. 117, 126 (Bankr. D. Mass. 1993), *aff'd* 169 B.R. 795 (D. Mass. 1994)(abstention appropriate when only party to benefit from determination of entitlement to a refund of taxes was the debtor); *In re American Motor Club, Inc.,* 139 B.R. 578 (Bankr. E.D.N.Y. 1992)(abstention appropriate where debtor's principal not debtor's creditors would benefit from review under § 505); *In re Millsaps v. United States (In re Millsaps),* 133 B.R. 547, 555 (Bankr. M.D. Fla. 1991), *aff'd* 138 B.R. 87 (M.D. Fla. 1991)(abstention appropriate when tax controversy would have no effect on creditors because there would be no distribution to creditors). However, the majority of these cases are no asset Chapter 7 cases. *See e.g., Gossman v. United States (In re Gossman),* 206 B.R. 264 (Bankr. N.D. Ga. 1997); *In re Shapiro*, 188 B.R. 140 (Bankr. E.D. Pa. 1995); *In re Starnes*, 159 B.R. 748 (Bankr. W.D.N.C. 1993); *In re Byerly*, 154 B.R. 718 (Bankr. S.D. Ind. 1992); *In re Cain*, 142 B.R. 785 (Bankr. W.D. Tex. 1992); *In re Millsaps*, 133 B.R. 547 (Bankr. M.D. Fla. 1991), *aff'd* 138 B.R. 87 (M.D. Fla. 1991); *In re Kaufman*, 115 B.R. 378 (Bankr. S.D. Fla. 1990). Abstention in no asset Chapter 7 cases is generally thought to be appropriate because creditors are receiving no distribution from the estate and thus no benefit from the § 505 determination.

Abstention has also been found to be appropriate in Chapter 11 cases if only the reorganized debtor or its principals will benefit. For example, in *In re St. John's Nursing Home, Inc.,* 154 B.R.

at 126, the court abstained where the debtor's plan was already confirmed and unsecured creditors' recoveries were unaffected by a determination of the non-dischargeable tax claim. Similarly, the court in *Marcellus Wood & Trucking, Inc.*, 158 B.R. 650, abstained where the confirmed plan did not provide for additional payments to any creditor if the debtor was successful in its challenge to the tax claims. *Id*. at 654. *See also New Haven Projects Ltd. Liab. Co. v. City of New Haven (In re New Haven Projects Ltd. Liab. Co.),* 225 F.3d 283 (2d Cir. 2000)(finding abstention not abuse of discretion where debtor's unsecured debt was de minimis); *In re American Motor Club, Inc.,* 139 B.R. at 584 (finding abstention appropriate where § 505 determination would help only debtor's principal).

However, § 505 determinations have been held to be appropriate where other creditors are benefitted. *See e.g., In re Huddleston*, No. 94-50342, 1994 WL 764193, *6-7 (Bankr. W.D. La. Dec. 2, 1994) (abstention denied in a chapter 11 case postconfirmation)*; In re AWB Assoc.,* 144 B.R. 270 (Bankr. E.D. Penn. 1992)(abstention not appropriate in Chapter 11 cases where debtor moved for determination of its real property tax liability); *In re Continental Airlines, Inc*., 138 B.R. 430, 434 (Bankr. D. Del. 1992) (did not abstain citing the need to efficiently administer case for the benefit of all parties), *rev'd on other grounds*, 149 B.R. 76 (D. Del. 1993), *aff'd in part, rev'd in part*, 8 F.3d 811 (3d Cir.1993), *cert. denied*, 510 U.S. 1192, (1994); *In re 499 W. Warren Street Assoc.*, 143 B.R. 326, 329 (Bankr. N.D.N.Y. 1992) (did not abstain citing court's discretionary authority to review tax liability).

From a review of the foregoing cases, it appears that in most cases of those cases, the decision of whether to abstain was closely tied to whether anyone other than the debtor would benefit from a § 505 determination. However, the Fifth Circuit has recently spoken to this issue. *See In re Luongo*, 259 F.3d 323 (5th Cir. 2001). The Fifth Circuit pointed out that in determining whether

abstention is appropriate, many courts consider the dual purpose of § 505, namely "affording a forum for the ready determination of the legality or amount of tax claims, which determination, if left to other proceedings, might delay conclusion of the administration of the bankruptcy estate" and "providing an opportunity for the trustee, on behalf of the creditor, to contest the validity and amount of a tax claim when the debtor has been unwilling or unable to do so." *Luongo*, 259 F.3d at 330 (5th Cir. 2001) (*citing In re Diez*, 45 B.R. 137, 138 (Bankr. S.D. Fla. 1984) and *In re Millsaps*, 133 B.R. 547, 554 (Bankr. M.D. Fla. 1991)). It also noted that many courts consider general unsecured creditors, and not the debtor, to be the intended beneficiaries of § 505, and therefore rule that abstention is warranted where there would be no benefit to general unsecured creditors. The Fifth Circuit expressly rejected that view and stated:

> These cases improperly view § 505 in isolation without proper deference to the other goals of the Bankruptcy Code. The bankruptcy court's responsibility in administering the estate is not only to achieve a fair and equitable distribution of assets to the creditors, but also to 'relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh.' Thus, a court should consider the impact of the abstention not only on the general administration of the estate, but also on the debtor.

Luongo, 259 F.3d at 330 (internal citations omitted). The Fifth Circuit held that

> where bankruptcy issues predominate and the Code's objectives will potentially be impaired, bankruptcy courts should generally exercise jurisdiction. Conversely, absent any bankruptcy issues or implication of the Code's objectives, it is usually appropriate for the bankruptcy court to decline or relinquish jurisdiction.

Luongo, at 332. The Fifth Circuit expressly stated that such bankruptcy objectives include protecting a debtor's right to a fresh start.

In this case, it is clear that the Debtors may obtain a significant benefit should the Court entertain the Valuation Motion. It is also clear that the substantive law involved is at least as much the purview of the bankruptcy court as it is the state court. The Court is not called upon to construe

the tax statutes; the Debtors do not challenge the tax rates. Rather, the overriding issue is one of fact -- what is the value of each of the Properties. This Court routinely values real property and, in fact, is required to do so in many different contexts. *See, e.g.* 11 U.S.C. §§ 362(d), 506(a), 1129 and 1325.

Further, abstention would likely be an empty act. Although the Debtors have not filed formal objections to the claims of the Taxing Authorities, they clearly could do so, and the Court would likely have to determine many of these same issues in that context. Now that the plan is confirmed, the Valuation Motion is, in substance, an objection to the claims of the Taxing Authorities. The confirmed plan provides for a retention of jurisdiction by this Court to determine the allowance of the claim of any creditor. The approved disclosure statement notified creditors of the pendency of the Valuation Motion and stated that the Debtors believe that their tax liabilities "will be substantially reduced through the objections to claims/§ 505 process." *See* First Amended Consolidated Disclosure Statement, p. 30.

For all of these reasons, the Court will not abstain from hearing the Valuation Motion.

2. Is the Court Precluded from Determining the Value of the Properties?

For several of the Properties for several of the years in dispute, the Taxing Authorities have either state court judgments (the "Judgments") determining the value of those Properties or a determination by the Tarrant County Appraisal District ("TAD") following a protest by one of the Debtors of the notice of appraised value sent to the Debtors by TAD (the "TAD Determination"). The Taxing Authorities contend that this Court is precluded from redetermining either of those value determinations under § 505(a)(2) of the Bankruptcy Code and the doctrine of res judicata. The Debtors counter that the Court's power to apply § 505 is discretionary, and that res judicata is inapplicable because the Judgments and/or the TAD Determinations were taken by default or were made after the relevant Debtor failed to prosecute or withdrew the protest.

Section 505(a)(2) of the Code provides that a bankruptcy court may not determine "the amount or legality of a tax . . . if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case. . . ." *See* 11 U.S.C. § 505(a)(2). As such, § 505 recognizes and incorporates the doctrine of res judicata into bankruptcy court decisions regarding prior determinations of tax liability. *In re Northbrook Partners LLP*, 245 B.R. 104, 111-12 (Bankr. D. Minn. 2000) ("This statute [§ 505(a)(2)(A)] incorporates the concept of res judicata (also known as claim preclusion) under common law jurisprudence.") (citing *In re Teal*, 16 F.3d 619, 621 n.3 (5th Cir. 1994)); *In re Doerge*, 181 B.R. 358, 364 (Bankr. S.D. Ill. 1995) ("Section 505(a)(2)(A) expresses in jurisdictional terms the traditional principles of res judicata or claim preclusion."). Res judicata, in turn, applies where there is an identity of parties, where the prior judgment was entered by a court of competent jurisdiction, where the prior action concluded with a final judgment on the merits, and where the same claim or cause of action was involved. *Ellis v. Amex Life Ins.* Co., 211 F.3d 935, 937 (5th Cir. 2000); *see United States v. Shanbaum*, 10 F.3d 305 (5th Cir. 1994). Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from re-litigating issues that were or could have been raised in that action. *See In re Southmark Corp.,* 163 F.3d 925 (5th Cir. 1999); *In re Doerge*, 181 B.R. 358, 364 (Bankr. S.D. Ill. 1995) ("The doctrine of res judicata ensures the finality of decisions by barring litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.").

Section 505(a)(2) is a jurisdictional statute, and deprives bankruptcy courts of the authority to decide a category of claims (*i.e.*, previously adjudicated tax liabilities). *See In re Teal*, 16 F.3d 619, 622 (5th Cir. 1994) ("Simply stated, § 505(a)(2)(A), a jurisdictional statute, is mandatory . . .

."). By enacting a statute that is jurisdictional in nature, "[c]ongress did not leave bankruptcy courts the discretion to disregard tax court adjudications and concomitantly seize jurisdiction out of equitable concerns." *In re Baker*, 74 F.3d 906, 910 (9th Cir. 1996) (citation omitted); *In re Teal*, 16 F.3d 619, 622 (5th Cir. 1994) ("A bankruptcy court, however, is barred by § 505(a)(2)(A) from 'employ[ing] its equitable powers to look behind the judgment[]' of the tax court.") (citations omitted).

Thus, the question here is whether the TAD Determinations and/or the Judgments meet the standards of § 505(a)(2) and res judicata – *i.e.*, whether they were (i) contested before and (ii) adjudicated by a court or administrative tribunal of competent jurisdiction.[8] A brief review of the administrative and judicial review procedure under Texas law will be helpful. Texas ad valorem taxation is governed by the Texas Property Tax Code, codified in the Tex. Tax Code Ann., §§ 1.01, *et. seq*. (Vernon 2001). The Tax Code contains a comprehensive scheme for the determination and appeal of property tax appraisals, including provisions for both administrative and judicial review. Initially, the appraisal district sets an appraised value and notice is sent to the property owner. A property owner may protest that value and if he does, administrative review is available before appraisal review boards. Generally, to obtain such a hearing, a property owner must file a notice of protest with the appraisal review board within a statutory time frame. *See* Tex. Tax Code Ann., § 41.44 (Vernon 2001). The property owner has a right to appear and present evidence before the

[8]The Debtors do not dispute that the Judgments were entered by a court of competent jurisdiction or that the TAD Determinations were made by an administrative tribunal with competent jurisdiction. *See* Trial Brief With Regard to Debtors' Motion to Determine Value of Properties For Ad Valorem Tax Purposes at 16-17 ("In the situation where the taxes have not been contested by the Debtor in tax court or before an administrative tribunal, *such as a local ad valorem tax authority or a state agency, prior to the filing of the bankruptcy proceeding. . . .*") (emphasis added); *see also Texas Comptroller of Pub. Accounts v. Trans State Outdoor Advertising Co. (In re Trans State Outdoor Advertising Co.)*, 140 F.3d 618, 620-21 (5th Cir. 1998) (finding that a hearing before the an administrative judge, pursuant to Texas statute governing taxpayers' disputes, was an adversarial proceeding before a tribunal of competent jurisdiction); *El Tropicano Inc. v. Garza (In re El Tropicano, Inc.)*, 128 B.R. 153, 158 (Bankr. W.D. Tex. 1991) (county appraisal district was an administrative tribunal of competent jurisdiction; court did not have authority to review its decisions under § 505(a)(2)(A)).

appraisal review board. Tex. Tax Code Ann. § 41.45(b) (Vernon 2001). Once the appraisal review board issues its order determining the protest, a dissatisfied property owner can file a petition for review with the district court. *See* Tex. Tax Code Ann., §§ 42.01, 42.21(a) (Vernon 2001). The district court's review is by trial *de novo, see* Tex. Tax Code Ann., § 42.23 (Vernon 2001), and the prior action by the appraisal review board is not admissible. Either party is entitled to a jury. *See id.*

Here, with respect to the TAD Determinations, the Debtors protested the notice of appraised value on certain of the Properties for certain years. In some instances, the Debtors were successful in their protest and the value of the property was lowered (which resulted in lower taxes). In other instances, the Debtors' protest was not successful. In some instances, after filing a "protest," the Debtors did not pursue their protest. *See* Taxing Authorities' Exhibit 15.

With respect to the Judgments, it appears that the Debtors were properly served with process but failed to appear or otherwise answer the state court petition filed by the Taxing Authorities. *See, e.g.* Taxing Authorities' Exhibit 1 (judgment reciting due service and failure to appear). Thus, it appears that all of the Judgments were taken by default against the Debtors.

The Fifth Circuit has found that adjudication in the context of § 505(a)(2) means the entry of a judgment by a court of competent jurisdiction. *See In re Teal*, 16 F.3d 619, 621 (5th Cir. 1994) ("In any event, 'adjudicate' is '[s]ynonymous with *adjudge* in its strictest sense.' Thus, a matter has been 'adjudicated' when a '[j]udgment of a court of competent jurisdiction has been decreed") (citation omitted); *see also In re Baker*, 74 F.3d 906, 909 (9th Cir. 1996) ("The Tax Court 'adjudicated' the [Debtors'] tax liability when it entered judgment against them. A matter is adjudicated when a judgment of a court of competent jurisdiction has been decreed . . . A case not adjudicated on the merits can nonetheless be 'adjudicated' within the meaning of the statute."). A state agency which

acts in a judicial capacity is accorded the same status. *See Texas Comptroller of Pub. Accounts v. Trans State Outdoor Advertising Co. (In re Trans State Outdoor Advertising Co.)*, 140 F.3d 618 (5th Cir. 1998) (proceeding to challenge sale taxes before administrative law judge who proposed decision to Comptroller was quasi-judicial and therefore "amounted to an adjudication by an 'administrative or judicial tribunal' under § 505(a)(2)(A)); *University of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986) ("Accordingly, we hold that when a state agency 'acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate,' federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts.") (citations omitted); *United States v. Utah Const. & Min. Co.*, 384 U.S. 394, 422 (1966) ("When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose . . . . In the present case the Board was acting in a judicial capacity when it considered the Pier Drilling and Shield Window claims, the factual disputes resolved were clearly relevant to issues properly before it, and both parties had a full and fair opportunity to argue their version of the facts and an opportunity to seek court review of any adverse findings. There is, therefore, neither need nor justification for a second evidentiary hearing on these matters already resolved as between these two parties."); *Arkansas Corp. Comm'n v. Thompson*, 313 U.S. 132, 144-45 (1941) (holding that Arkansas Corporation Commission was a quasi-judicial body, with full power to summon witnesses and hear evidence, and that, absent appeal to the state courts, the Commission's determinations of tax liability could not be relitigated in bankruptcy court); *In re Onondaga Plaza Maint. Co.,* 206 B.R. 653, 656 (Bankr. N.D.N.Y. 1997) (finding that the Syracuse Assessment Board of Review was a "quasi-judicial" body where it was empowered to hear and determine complaints in relation to real

property assessments, to administer oaths, take testimony and hear proofs in regard to such complaints, and to require that the complainant or his agent or representative appear, and where its determinations were subject to appeal); *El Tropicano, Inc. v. Garza (In re El Tropicano, Inc.)*, 128 B.R. 153 (Bankr. W.D.Tex.1991) (holding that Bexar County Appraisal District was an administrative or judicial tribunal of competent jurisdiction where the taxpayer had the opportunity to appear, offer evidence, and appeal the Appraisal District's decision); *Walters v. Betts (In re Betts)*, 174 B.R. 636, 643 (Bankr. N.D. Ga. 1994) ("Preclusive effect, however, may be given to such factfinding as would be given by the courts of that state when the agency is 'acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. . . .'") (citations omitted).

Applying these standards here, the Court concludes that the Judgments and the TAD Determinations satisfy the "adjudicated by" prong of § 505(a)(2).

Were the TAD Determinations "contested?" In *In re Teal*, 16 F.3d 619, 621 n.4 (5th Cir. 1994), the Fifth Circuit examined the legislative history and concluded that "contested" in the context of a case against the IRS meant that a petition had been filed by the debtors in the Tax Court and that the IRS answered. *See also In re Baker*, 74 F.3d 906, 909 (9th Cir. 1996) ("According to § 505(a)(2)'s legislative history, a proceeding is contested if, prior to the bankruptcy filing, the debtor had filed a petition in the Tax Court and the IRS had filed an answer. This definition has been adopted by the few courts that have considered the issue, and we see no reason to depart from it.") (citations omitted).

Applying the *Teal* rubric to the TAD Determinations where the Debtors filed a written protest (and either prosecuted that protest or failed to prosecute that protest after its filing), the Court concludes that for the Properties and years in question, the valuations were contested before and

adjudicated by an administrative tribunal of competent jurisdiction. *See United States v. Utah Const. & Min. Co.*, 384 U.S. 394, 422 (1966) (finding that determinations of the Advisory Board of Contract Appeals were final and conclusive where it provided the parties with a full and fair opportunity to litigate with respect to all claims as to which the board had jurisdiction and an opportunity to seek court review of any adverse findings); *Texas Comptroller of Pub. Accounts v. Trans State Outdoor Advertising Co. (In re Trans State Outdoor Advertising Co.)*, 140 F.3d 618, 620-22 (5th Cir. 1998) (affirming bankruptcy court's determination that a Texas State Comptroller's administrative hearing process was an "adjudication 'by a judicial or administrative tribunal of competent jurisdiction'"); *In re Onondaga Plaza Maint. Co.*, 206 B.R. 653, 656 (Bankr. N.D.N.Y. 1997) (finding that the Syracuse Assessment Board of Review was a "quasi-judicial" body, and that its determinations constituted decisions contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction); *El Tropicano, Inc. v. Garza (In re El Tropicano, Inc.*), 128 B.R. 153 (Bankr. W.D.Tex.1991) (finding that the bankruptcy court did not have jurisdiction to perform a redetermination of Bexar County Appraisal District as the Appraisal District was an administrative or judicial tribunal of competent jurisdiction and the taxpayer had the opportunity to appear, offer evidence, and appeal the Appraisal District's decision); *see also City Vending of Muskogee, Inc. v. Oklahoma Tax Comm'n*, 898 F.2d 122 (10th Cir. 1990) (holding that the bankruptcy court lacked jurisdiction under § 505 to determine whether sale of cigarettes to Indian tribes was exempt from the state cigarette tax under the Commerce Clause because Oklahoma Tax Commission determined it lacked authority to hear constitutional claims, and taxpayer failed to appeal this determination to the Oklahoma Supreme Court). However, where the Debtors did not protest the notice of appraised value received by them, there has been no contest or adjudication of value that prevents this Court's determination of value under § 505(a)(1) of the Bankruptcy Code. *See, e.g., City of Amarillo v.*

Eakins, 399 F.2d 541, 543 (5th Cir. 1968) (affirming decision that the bankruptcy referee had authority to make "a redetermination of the taxes due for the years 1962-1964 as the taxes for those years had not been contested" but that he did not have the authority to do so "for 1965 and 1966, the years that the taxes were contested before the Potter County Board of Equalization").

That leaves for analysis the Judgments which, as previously noted, were taken by default against the Debtors. The Debtors contend that a default judgment cannot be used to invoke res judicata or to defeat their request for a § 505(a)(1) determination.[9]

The Court disagrees. The fact that the Judgments were taken by default is irrelevant as courts apply res judicata principles to default judgments. *See Riehle v. Margolies*, 279 U.S. 218, 225 (1929) ("A judgment of a court having jurisdiction of the parties and of the subject-matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default"); *Moyer v. Mathas*, 458 F.2d 431, 434 (5th Cir. 1972) ("the 1962 judgment procured by the government against the taxpayer was an adjudication of the validity of [the] tax liability. . . [it] is no less res judicata because it was obtained by default, absent any proof of fraud, collusion, or lack of jurisdiction . . . We conclude that under general principles of res judicata the existence of these elements operates to bar the plaintiff from relitigating the validity of the tax assessments") (citations omitted).

The Debtors offered no evidence that the Judgments were obtained against them through fraud or collusion. The state court had jurisdiction to entertain the relief requested by the Taxing Authorities. Thus, the Judgments are binding on the Debtors for the years and Properties in question.

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[9] The Taxing Authorities advised the Court at the hearing that although the Debtors failed to appear in the actions resulting in the Judgments, the Judgments were not entered solely on that basis; rather, the Judgments were entered after the Taxing Authorities presented evidence in support of the valuations. The evidence supports the Taxing Authorities' contention. Each of the Judgments recites, *inter alia*, as follows "the Court having heard the pleadings, evidence and argument of counsel, and having fully understood the same . . . that the respective delinquent tax records, from which witnesses for Plaintiffs and Intervenors testified in this case . . . ." *See* Taxing Authorities' Exhibits 1 through 4. It thus appears that both documentary and testimonial evidence was presented to the state court prior to entry of the Judgments.

See In re Baker, 74 F.3d 906, 910 (9th Cir. 1996) ("In the tax context, once a taxpayer's liability for a particular year is litigated, 'a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year.'") (quoting *Commissioner v. Sunnen*, 333 U.S. 591, 598 (1948)); *see also Crest-Mex Corp. v. County of Dallas (In re Crest-Mex)*, 223 B.R. 681, 683 (Bankr. S.D. Tex. 1998) (granting summary judgment for properties in years for which there had been a prior adjudication of that value, but declining to do so for years where there had been no such prior determination); *In re Doerge*, 181 B.R. 358, 364 (Bankr. S.D. Ill. 1995).

In sum, the Court can only determine the value of the Properties under § 505(a)(1) of the Bankruptcy Code for the years for which there is no Judgment or TAD Determination.[10]

3. Are the Debtors Bound by their Prior Admissions of Value?

The Debtors' schedules, as originally filed with the Court, contained values for the Properties which contradict the values they now seek from the Court. Moreover, the Valuation Motion itself contains requested values different from the amended schedules the Debtors filed shortly before trial. The Taxing Authorities would have the Court take judicial notice of the original schedules, and bind the Debtors to the values listed in those schedules. The Debtors counter that property values fluctuate and that the Debtors should not be bound by their statements in their original schedules. Moreover, the Debtors contend that any "judicial admission" of the value of the Properties in their original schedules was superceded by their filing of amended schedules.

The Debtors' bankruptcy schedules were filed and signed under oath. Thus, the Court may take judicial notice of them and treat them as judicial admissions. *See Larson v. Groos Bank, N.A.*,

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[10] The Court would reach the same result if these issues were instead raised in the context of claims objections. In *Texas Comptroller of Pub. Accounts v. Trans State Outdoor Advertising Co. (In re Trans State Outdoor Advertising Co.),* 140 F.3d 618 (5th Cir. 1998), the Fifth Circuit concluded that a bankruptcy court was without jurisdiction, pursuant to 11 U.S.C. §505(a)(2), over an objection to tax claims. *See also In re Baker*, 74 F.3d 906 (9th Cir. 1996) (court could not consider objection to tax claim as court was without jurisdiction to redetermine tax liabilities pursuant to 11 U.S.C. §505(a)(2).

204 B.R. 500, 501 (W.D. Tex. 1996) ("Specifically, statements in bankruptcy schedules are executed under penalty of perjury and when offered against a debtor are eligible for treatment as judicial admissions"); *In re Standfield*, 152 B.R. 528, 531 (Bankr. N.D. Ill. 1993) ("The Court can take proper judicial notice of the existence and filing of the papers constituting the records in both of the Debtors' cases. The bankruptcy court is duty bound to take judicial notice of its records and files. Verified schedules and statements filed by Debtors are not just pleadings, motions or exhibits, they contain evidentiary admissions.") (citations omitted).

However, the values continued in the Debtors' schedules are not conclusive evidence of value, and the Court may consider the scheduled value, along with other probative evidence of value, in making its determination of the value of the Properties. *See In re Braymer,* 126 B.R. 499, 503 (Bankr. N.D. Tex. 1991) ("the value of property as shown on schedules is not so binding that a party may not, by other evidence or testimony, modify such value"); *In re Hansen*, 95 B.R. 586, 589 (Bankr. C.D. Ill. 1989) ("Nor can the Court ignore the Debtors' value of the life estates at $15,000.00 when they filed their bankruptcy slightly more than one year after the conveyance. This value constitutes an admission that the life estates were worth only $15,000.00 at that time. *Such an admission is not conclusive, however, and it could have been contradicted or explained at the trial.*") (emphasis added) (citations omitted).

The Court will consider all of the evidence of the value of the Properties – the original scheduled values, the amended scheduled values, the Debtors' appraiser's values, the TAD notices of appraised value, the Judgments, and the TAD Determinations – before coming to its conclusions regarding the value of the Properties for the years the Court has jurisdiction to determine, but will not rely on either set of schedules to conclusively determine the value of the Properties. *See also Larson v. Groos Bank, N.A.*, 204 B.R. 500, 501 (W.D. Tex. 1996) ("Generally, factual assertions in

pleadings, *which have not been superseded by amended pleadings,* are judicial admissions against the party that made them.") (citations omitted).

4. What is the Affect of the Prior Bankruptcy Case on the Prior Case Properties?

a. The Prior Case Claims

The Prior Case Claims were filed by the Taxing Authorities in the Prior Case. The Prior Case Claims became allowed claims in the Prior Case because the Taxing Authorities filed their Proofs of Claim, the debtor did not object to such claims and the Prior Case Claims became allowed claims under the terms of the confirmed plan.

Allowance of the Prior Case Claims in the Prior Case is res judicata of the amount of those claims in these jointly administered cases. The doctrine of res judicata bars a party from bringing a claim if a court of competent jurisdiction has rendered a final judgment on the merits of the claim in a previous action involving the same parties or their privies. *See Nilsen v. City of Moss Point, Mississippi*, 701 F.2d 556, 559 (5th Cir. 1983). In *United States v. Coast Wineries*, 131 F.2d 643, 648 (9th Cir. 1942), the court held that the allowance or disallowance of a "claim in bankruptcy is binding and conclusive on all parties or their privies, and being in the nature of a final judgment, furnishes a basis for a plea of res judicata." *See Siegel v. Federal Home Loan Mortgage Corp.*, 142 F.3d 525, 529 (9th Cir. 1998) (citing with favor the holding in *United States v. Coast Wineries* that claim allowance is res judicata). Thus, the Court will not determine the value of the Properties that were involved in the Prior Case for the years for which proofs of claim were allowed for the Taxing Authorities.

b. Tax Claims Arising During the Administration of the Prior Case

The Taxing Authorities contend that "with respect to any taxes which arose during the administration of [Davidson's] case, he was bound to protest and pay those in accordance with state law pursuant to 28 U.S.C. §§ 959 and 960." *See* Taxing Authorities' Joint Resp. to Debtor's Motion, filed March 12, 2001 at ¶ 9.

28 U.S.C. § 959 provides:

> (a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.
>
> (b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959. Moreover, 28 U.S.C. § 960 provides:

> Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

28 U.S.C. § 960.

Numerous courts have determined a debtor's post-petition tax liability using § 505. *See, e.g., In re Mira*, 245 B.R. 788, 791 (Bankr. M.D. Pa. 1999) (holding that a plain reading of § 505(b) allows courts to determine tax liabilities that arise during the administration of the case); *In re Schmidt*, 205 B.R. 394 (Bankr. N.D. Ill. 1997) (holding that the court had jurisdiction to determine post-petition tax liabilities of reorganized Chapter 11 debtors); *Kellogg v. United States (In re Southwestern States Mktg. Corp.)*, Adv. No. 792-7013, 1994 WL 762192, at *4 (Bankr. N.D. Tex. Jan. 12, 1994), *aff'd* 179 B.R. 813 (N.D. Tex. 1994), *aff'd*, 83 F.3d 413 (5th Cir. 1996) (stating §

505(b) provides a mechanism for obtaining a prompt determination of unpaid tax liability incurred post-petition); *Laptops Etc. Corp. v. District of Columbia (In re Laptops Etc. Corp.)*, 164 B.R. 506 (Bankr. D. Md. 1993) (using § 505 to determine debtor's post-petition tax liability). Consistent with these cases and because there is no language in § 505 limiting the Court's determination of a debtor's tax liability to pre-petition taxes, the Court believes that the Taxing Authorities' argument involving 28 U.S.C. §§ 959 and 960 is overbroad. Thus, claims of the Taxing Authorities on the Prior Case Properties which arose during the administration of the Prior Case are properly the subject of the Valuation Motion.

5. Are the Debtors entitled to Credit Tax Overpayments?

With regard to one of the properties, 3319 Ave. L, the Debtors assert that they are entitled to a "credit" for taxes paid on such property. The Court finds the analysis by the Third Circuit in *Custom Distribution Serv., Inc. v. City of Perth Amboy,* 224 F.3d 235 (3d Cir. 2000) persuasive. In *Custom Distribution,* the court held that in order to be entitled to a "credit" or "offset" against tax liability not yet paid, the debtor must comply with state law time limits for requesting a credit or offset although the request for credit or offset need not be filed with the taxing authority before bringing such request in Bankruptcy Court as is the case when requesting a refund. The court held that the debtor was time-barred from requesting a credit or offset pursuant to a § 505 review as it was time-barred from filing an appeal under New Jersey state law. *See also In re Luongo*, 259 F.3d 323 (5th Cir. 2001) (citing *Custom Distribution* with approval in § 505(a)(2)(B) context and holding that a trustee must comply with the refund procedures set forth by the government from which it seeks a refund).

Texas law does not specifically provide procedures for requesting a credit or offset but provides procedures to appeal a decision of the taxing authority review board to the district court

under Tex. Tax Code § 42.21. *See* Tex. Tax Code Ann. § 42.21 (Vernon 2001). Presumably, if appealed to the district court, the court could allow a credit or offset instead of a refund.

Under § 42.21, the party filing a petition for review with the district court must do so "within 45 days after the party received notice that a final order has been entered from which an appeal may be had." *See* Tex. Tax Code. Ann. § 42.21(a) (Vernon 2001). Such time frame is jurisdictional. *Appraisal Review Bd. v. Int'l Church of Foursquare Gospel,* 719 S.W.2d 160 (Tex. 1986) (failure to include county appraisal district as a party within 45 days after receiving notice of final order deprived court of jurisdiction of the appeal); *see also Poly-America v. Dallas County Appraisal Dist.* 704 S.W.2d 936 (Tex. App.– Waco 1986)(holding requirements of this statute are jurisdictional and the district court does not acquire jurisdiction of petition for review unless the appraisal district and appraisal review board are made defendants in the suit before the 45-day time limit expires).

Thus, even if a credit could be obtained under Texas law through the normal appellate procedure, the Debtors' request before this Court is untimely as it would have had to be brought within the 45-day time limit of § 42.21.

B. The Factual Issues

Each Property will be analyzed factually in light of the legal conclusions set forth above.

1. 3425 Ave. L

The Valuation Motion seeks a determination of value for this property from 1991-98. The Debtors protested the notice of appraised value for this property in 1994 (a value of $3,100.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1994. *See* pp. 10-18, *supra*. All other years are properly before the Court.

The Debtors offered no evidence of the value of this property in 1991. The only value in the record for 1991 is the notice of appraised value from TAD in the amount of $18,023.00. *See* Taxing

Authorities' Exhibit 15. The Court finds the TAD appraised value to be the value of the property in 1991.

The Debtors offered expert testimony regarding the value of this property for the other years in dispute. The Debtors' expert, Brenda Taylor ("Taylor"), is a real estate appraiser. Taylor is a State Certified Residential Real Estate Appraiser, Licensed by the Texas Appraiser Licensing and Certification Board. *See* Debtors' Exhibit 1. Taylor has been employed as a real estate appraiser since 1981, and has worked as an independent fee appraiser, conducting real estate appraisals in the Dallas and Fort Worth areas, since 1988. *See id.* Prior to her testifying, Taylor made visual inspections of each of the properties and prepared market valuations for each of the properties, for each year in question, based upon her "inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data." *See* Debtor's Exhibits 2-11. After considering her background, license and certification, and methodology, the Court finds that Taylor is qualified to offer an expert opinion as to the market value of this property and will consider her testimony as an expert opinion as to the market value of this property. For each of the years 1992-98, Taylor valued the property at $3,000.00. *See* Debtors' Exhibit 9. The notice of appraised value of the property given by TAD was $11,606.00 in 1992-93; $3,100.00 in 1995 and 1996; and $3,300.00 in 1997-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence, the Court finds Taylor's value to be the most credible evidence of the value of this property for the years for which she expressed an opinion.[11] Thus, the

[11]The Court finds Taylor's testimony to be the most credible evidence of the value of the Properties for a variety of reasons. First, she actually testified at the hearing and the Court had the opportunity to assess her qualifications and the validity of her opinions of value first hand. Second, she had viewed each of the Properties, could provide the Court with a sense of the condition of each of the Properties (complete with pictures), and derived her opinion of the value of each of the Properties from research of comparable sales during the years in question. Third, the Taxing Authorities offered no evidence of how TAD came to its conclusions of value as contained in the notice of appraised value sent to the Debtors for each of the years in dispute for each of the Properties. Thus, the Court had no basis upon which to evaluate those value determinations. Fourth, in many of the years for which the

Court values this property at $3,000.00 for 1992-93 and 1995-98.

2. 1500 S. Edgewood Terrace

The Valuation Motion seeks a determination of value for this property from 1990-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $12,000.00), 1994 (same value), 1996 (a value of $6,000.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992, 1994, and 1996. *See* pp. 10-18, *supra*. Moreover, the Taxing Authorities have a Judgment with respect to this property for 1990-92 (determining a $12,000.00 value). *See* Taxing Authorities' Exhibit 4. For the reasons stated previously, the Court will not determine a value of this property for 1990-92. *See* pp. 10-18, *supra.* All other years are properly before the Court.

The Debtors offered expert testimony regarding the value of this property for 1990-98. For each of those years, Taylor valued the property at $3,000.00. *See* Debtors' Exhibit 7. The notice of appraised value of the property given by TAD was $12,000.00 in 1993 and 95 and was $6,000.00

Taxing Authorities obtained a Judgment against the Debtors determining a value for one of the Properties, the notice of appraised value for that property was higher (in some cases significantly higher) than the value determined by the state court in the Judgment. For example: for the property located at 1200 E. Powell, while the notice of appraised value listed the property at $16,102.00 for 1991, *see* Taxing Authorities' Exhibit 15, the Taxing Authorities obtained a Texas State Court default judgment in 1993 valuing that same property at $5,777.00 for the years 1990-92; for the property located at 1500 S. Edgewood Terrace, while the notice of appraised value listed the property at $17,012.00 for 1991, *see* Taxing Authorities' Exhibit 15, the Taxing Authorities obtained a Texas State Court default judgment in 1993 valuing that same property at $12,000.00 for the years 1990-92; for the property located at 3418 Ada, while the notices of appraised value listed the property at $27,253.00 for 1987, $21,997.00 for 1988-89, $13,814.00 for 1990-91, and $8,000.00 for 1992-93, *see* Taxing Authorities' Exhibit 15, the Taxing Authorities obtained a Texas State Court default judgment in 1997 valuing that same property at $4,300.00 for the years 1987-95; for the property located at 3009 Ave. H, while the notices of appraised value listed the property at $21,130.00 for 1987, $21,015.00 for 1988-89, $12,169.00 for 1990-91, $8,500.00 for 1992-93, and $8,400.00 for 1994, *see* Taxing Authorities' Exhibit 15, the Taxing Authorities obtained a Texas State Court default judgment in 1997 valuing that same property at $3,500.00 for the years 1987-95; and for the property located at 4608 Ave. I, while the notices of appraised value listed the property at $16,752.00 for 1987, $13,256.00 for 1988, $11,005.00 for 1990-91, and $7,000.00 for 1992-93, *see* Taxing Authorities' Exhibit 15, the Taxing Authorities obtained a Texas State Court default judgment in 1997 valuing that same property at $6,000.00 for the years 1987-88 and 1990-96. That fact caused the Court to be concerned about the accuracy of the TAD appraised value. Finally, the admissions of value of the Debtors are not conclusive. *See* p.18-19, *supra.* The Debtors now rely on the values expressed by their expert, Taylor, which is not improper.

in 1997-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property. Thus, the Court values this property at $3,000.00 for 1993, 1995, 1997-98.

3. 2704 Ash Crescent

The Valuation Motion seeks a determination of value for this property from 1990-98. The Taxing Authorities assert that the Debtors protested the notice of appraised value for this property in 1992 (a value of $11,500.00) and in 1994 (a value of $5,000.00). However, the Taxing Authorities did not enter or submit any evidence in support of that assertion. Therefore, each of the years 1990-98 are properly before the Court.

The Debtors offered expert testimony regarding the value of this property for 1991-98. For 1991-94, Taylor valued the property at $5,000.00 and for 1995-98, Taylor valued the property at $2,900.00. *See* Debtors' Exhibit 11. The notice of appraised value of the property given by TAD was $11,500.00 in 1993 and $5,000.00 in 1994-98.

Neither the Debtors nor the Taxing Authorities offered any testimony or evidence regarding the value of this property for 1990. The Court cannot, therefore, reach any conclusion as to the value of the property in 1990.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property for the years for which she offered an opinion. Thus, the Court values this property at $5,000.00 for 1991-94 and $2,900.00 for 1995-98.

4. 1200 E. Powell

The Valuation Motion seeks a determination of value for this property from 1991-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $16,102.00 and were successful is obtaining a reduced value of $5,777.00) and in 1994 (a value of $5,777.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992 and 1994. *See* pp. 10-18, *supra*. Moreover, the Taxing Authorities have a Judgment with respect to this property for 1990-92 (determining a $5,777.00 value). *See* Taxing Authorities' Exhibit 4. For the reasons stated previously, the Court will not determine a value of this property for 1990-92. *See* pp. 10-18, *supra.* All other years are properly before the Court.

The Debtors offered expert testimony regarding the value of this property for 1991-98. For each of those years, Taylor valued the property at $3,000.00. *See* Debtors' Exhibit 10. The notice of appraised value of the property given by TAD was $5,777.00 in 1993 and $5,700.00 in 1995-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property. Thus, the Court values this property at $3,000.00 for 1993 and for 1995-98.

5. 2908 Ave. G

The Valuation Motion seeks a determination of value for this property from 1991-98. The Debtors protested the notice of appraised value for this property in 1994 (a value of $1,800.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1994. *See* pp. 10-18, *supra*. All other years are properly before the Court.

The Debtors offered no evidence of the value of this property in 1991. The only evidence of value in the record for 1991 is the notice of appraised value from TAD in the amount of

$18,992.00. *See* Taxing Authorities' Exhibit 15. The Court finds the TAD appraised value to be the value of the property in 1991.

The Debtors offered expert testimony regarding the value of this property for 1992-98. For each of those years, Taylor valued the property at $1,000.00. *See* Debtors' Exhibit 2. The notice of appraised value of the property given by TAD was $18,960.00 in 1992; $9,840.00 in 1993; and $1,800.00 in 1995-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property for the years for which she offered an opinion. Thus, the Court values this property at $1,000.00 for 1992-93 and for 1995-98.

6. 3418 Ada

The Valuation Motion seeks a determination of value for this property from 1985-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $8,000.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992. *See* pp. 10-18, *supra*. Moreover, the Taxing Authorities have a Judgment with respect to this property for 1987-95 (determining a $4,300.00 value). *See* Taxing Authorities' Exhibit 2. For the reasons stated previously, the Court will not determine a value of this property for 1987-95. *See* pp. 10-18, *supra.* Finally, this property was at issue in the Prior Bankruptcy Case. *See* Case No. 89-40856, Schedule A. The Prior Case Claims were allowed for years 1987-1989, *see* Case No. 89-40856 Second Proof of Claim filed September 19, 1990 and Second Amended Plan of Reorganization filed May 20, 1991, and the Court will not determine a value of this property for those years. *See* pp. 20-23, *supra.*

The Debtors offered expert testimony regarding the value of this property for 1985-98.

Taylor valued the property at $5,000.00 for 1985-86, $3,000 for 1987-88, $2,000 for 1989, and at $1,000.00 for each year thereafter. *See* Debtor's Exhibit 6. The notice of appraised value of the property given by TAD was $4,300.00 for 1996-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property. Thus, the Court values this property at $5,000.00 for 1985-86 and $1,000.00 for 1996-98.

7. 3200 Ave. L

The Valuation Motion seeks a determination of value for this property from 1988-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $3,100.00) and 1994 (a value of $2,100.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992 or 1994. *See* pp. 10-18, *supra*. All other years are properly before the Court.

The Debtors offered expert testimony regarding the value of this property for 1988-98. For 1988-89, Taylor valued the property at $4,000.00; and for 1990-98, Taylor valued the property at $2,000.00. *See* Debtors' Exhibit 8. The notice of appraised value of the property given by TAD was $14,194.00 in 1991; $3,100.00 in 1992 and 1993; and $2,100.00 in 1994-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property. Thus, the Court values this property at $4,000.00 for 1988-89 and $2,000.00 for 1990-91, 1993 and 1995-98.

8. 4608 Ave. I[12]

[12]On December 18, 1998, the Debtors filed a Motion to Abandon or Convey Property in Satisfaction of Ad Valorem Tax and Other Secured Debts and Brief. The Taxing Authorities contend that this motion moots the Court's consideration of the Valuation Motion with respect to this property. However, the Debtors have never

The Valuation Motion seeks a determination of value for this property from 1985-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $7,000.00) and in 1994 (a value of $6,000.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992 and 1994. *See* pp. 10-18, *supra*. Moreover, the Taxing Authorities have a Judgment with respect to this property for 1987-88 and 1990-96 (determining a $6,000.00 value). *See* Taxing Authorities' Exhibit 1. For the reasons stated previously, the Court will not determine a value of this property for 1987-88 and 1990-96. *See* pp. 10-18, *supra.* Finally, this property was at issue in the Prior Case. *See* Case No. 89-40856, Debtor's Schedule A. The Prior Case Claims were allowed for years 1987-1988, *see* Case No. 89-40856, Second Proof of Claim filed September 11, 1990 and Second Amended Plan of Reorganization filed May 20, 1991, and the Court will not determine a value of this property for those years. *See* pp. 20-23, *supra.*

Neither the Debtors nor the Taxing Authorities offered evidence with respect to the value of this property in 1985. Therefore, the Court cannot reach any conclusion as to value in 1985. The Debtors offered expert testimony regarding the value of this property for 1986-98. For 1986 through 1989, Taylor valued the property at $4,000.00. For 1997-98, Taylor valued the property at $1,000.00. *See* Debtors' Exhibit 4. The notice of appraised value of the property given by TAD was $6,000.00 for 1997-98. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property for the years for which she offered an opinion. Thus, the Court values this property at $4,000.00 for 1986 and 1989,

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obtained a hearing or submitted an order which would have granted the relief requested in the Motion. The Court will enter an order denying the motion due to the Debtors' failure to prosecute the motion. The property, therefore, appears to still be in the bankruptcy estate and the valuation of the property is therefore properly before the Court.

and $1,000.00 for 1997-98.

9. 3319 Ave L

The Valuation Motion seeks a determination of value for this property from 1985-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $10,554.00 and succeeded in lowering the value to $8,000.00) and in 1994 (a value of $7,800.00). *See* Taxing Authorities' Exhibits 15 and 16. For the reasons stated previously, the Court will not determine a value of this property in 1992 and 1994. *See* pp. 10-18, *supra*. In addition, this property was owned by Mr. Davidson at the time he filed the Prior Case, but no proof of claim was filed by the Taxing Authorities with regard to this property.

At some point during the pendency of the instant case, this property was sold and taxes paid out of the proceeds of the sale. The Debtors seek a "credit" against unpaid taxes on other properties. For the reasons previously stated, the Court will not determine a value of this property for 1985-1991, 1993 or 1995-1998 so as to entitle the Debtors to a credit. *See* pp. 22-23, *supra.*

10. 3009 Ave H

The Valuation Motion seeks a determination of value for this property from 1985-98. The Debtors protested the notice of appraised value for this property in 1992 (a value of $8,500.00); in 1994 (a value of $8,400.00); and in 1995 (a value of $3,500.00). *See* Taxing Authorities' Exhibit 15. For the reasons stated previously, the Court will not determine a value of this property in 1992, 1994, and 1995. *See* pp. 10-18, *supra*. Moreover, the Taxing Authorities have a Judgment with respect to this property for 1987-95 (determining a $3,500.00 value). *See* Taxing Authorities' Exhibit 3. For the reasons stated previously, the Court will not determine a value of this property for 1987-95. *See* pp. 10-18, *supra.* Finally, this property was at issue in the Prior Case. *See* case no. 89-40856, Debtor's Schedule A. The Prior Case Claims were allowed for years 1987-1989 and

the Court will not determine a value of this property for those years. *See* Case No. 89-40856, Second Proof of Claim filed September 11, 1990 and Second Amended Plan of Reorganization filed May 20, 1991. *See* pp. 20-23, *supra.*

The Debtors offered expert testimony regarding the value of this property for 1985-98. For 1985-86, Taylor valued the property at $7,000.00. For 1996-98, Taylor valued the property at $2,000.00. *See* Debtors' Exhibit 5. The notice of appraised value of the property given by the TAD was $3,500.00 for 1996-98. There is no evidence with respect to the value given by TAD in 1985 or 1986. *See* Taxing Authorities' Exhibit 15.

After considering all of the evidence of value, and for the reasons previously noted, the Court finds Taylor's value to be the most credible evidence of the value of this property. Thus, the Court values this property at $7,000.00 for 1985-86 and at $2,000.00 for 1996-98.

An Order consistent with this Memorandum Opinion will be entered separately.

Signed this 21st day of October, 2002.

Barbara J. Houser
United States Bankruptcy Judge